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Via Email: [JamesLower@house.mi.gov](mailto:JamesLower@house.mi.gov)

Representative James Lower  
N-894 House Office Building  
P.O. Box 30014  
Lansing, MI 48909

Re: Objections to House Bill 4290 (HB 4290)

Dear Representative Lower:

I am submitting this letter in response to the currently proposed HB 4290. My office represents thousands of homeowners complaining of damages arising from a sewage backup. I served as the sole homeowner representative in negotiations for the passage of the current law that regulates sewage backup claims, (Public Act 222), which was signed by Governor John Engler on January 1, 2002 and am intimately familiar with the legal issues involved with a sewage backup. As explained in more detail below, we believe that the current law is appropriate and that HB 4290 is unnecessary. In summary, our main objections are:

**There is no crisis to address.** Under the current law, a claimant can only recover property loss. They cannot recover damages for pain and suffering nor can they recover punitive damages. There have not been any massive jury verdicts. In the 15 years since passage of the current law there has been less than twenty million dollars in damages paid out by local governments in the entire State of Michigan. In fact, the potential liability has caused many cities, including Birmingham, Beverly Hills and Jenison, plagued by chronic flooding, to fix their sewer system; and,

**The proposed bills would completely eliminate a claim of damages arising from a sewage backup.** As will be explained below, HB 4290 would make it impossible to sue for any damages that occurred during a rain event. The proposed bill is akin to saying that the operator of a motor vehicle is only liable for car accidents that occur when the car is parked.

Specifically, we have the following objections:

1. **HB4290 allows the discharge of raw sewage onto private property during rain events less severe than required by the MDEQ before a governmental entity can discharge sewage into the Great Lakes.**

In issuing permits and Consent Orders, the MDEQ only allows the discharge of untreated sewage into a lake or river where the rain exceeded a 25 year event. Typically, the MDEQ defines a 25 year rain event as 1.92" of rain in an hour and 4.09" of rain in 24 hours (See attached Consent Order issued by MDEQ to City of Lansing). Here, HB 4290 would provide total immunity for a rain event of 1.7" in an hour or 3.3" in 24 hours.<sup>1</sup> Such rain events are expected to occur every 5 years. Thus, as written, HB 4290 would hold that the destruction of private property is preferable to the discharge of sewage into a massive body of water. It is impossible to believe that anyone thinks that such a result would be good public policy.

2. **The wording of HB 4290 is so broad that it would bar any claim that occurred during any type of rain.**

The bill requires the dismissal of any lawsuit where "when rainfall, as measured by a generally recognized and accepted method, at or near the affected area or within the sewage disposal system service area was 1.7 inches or more in any 1-hour period or was 3.3 inches or more in a continuous 24-hour period." This language is poorly drafted and would completely undermine the ability of a homeowner to receive damages. As written, the statement "in any" time period does not require the rain event to be related to the flooding. A rain event occurring several days before, or even after, a backup could be used as the basis of a dismissal.

The statement "as measured by a generally recognized and accepted method at or near the affected area or within the sewage disposal system service area" further reduces the rainfall event for which a defendant will be liable. HB 4290 does not require a court to find that the rainfall event exceeded the stated values or even that the average amount of rain over the affected area exceeded the stated values. HB 4290 only states that if "a" single rain gauge anywhere near the affected area exceeds the stated amount, then the defendant will be entitled to immunity. For example, if there are 10 rain gauges that exceed the stated amount but "a" rain gauge in the "sewage disposal system area"<sup>2</sup> exceeds the stated amount, then the defendant will be entitled to immunity. Virtually every rain event will have a microburst that exceeds a rain event that is expected to occur every 5 years.

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<sup>1</sup> Wet weather events are highly studied and are assigned a probability of return. These probabilities are listed in Technical Paper 40 (TP 40) which is a study of wet weather events prepared by the United States Department of Commerce Weather Bureau. Pursuant to TP 40, 1.7" of rain in one hour is a wet weather event that can be expected to occur approximately every 5 years and a rain event of 3.3" in 24 hours can be expected to occur approximately every 5 years.

<sup>2</sup> Many sewage disposal areas encompass 100 plus square miles.

In total, to avoid liability, the defendant only has to demonstrate that somewhere in its sewage system "a" rain gauge during an undefined time exceeded a rain event that is expected to occur every 5 years. With no limitation as to when or where the rain event occurred and no requirement that the average of the rainfall exceeded the stated values, HB 4290 would provide total immunity for any sewage backup that occurred as a result of any type of rain.

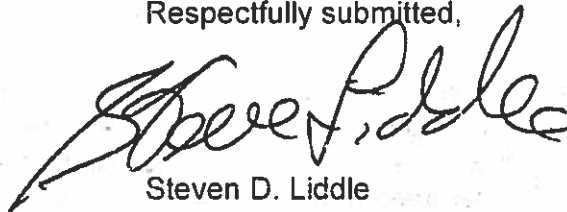
**3. HB 4290 provides for absolute immunity if the sewer system was designed and constructed according to MDEQ standards.**

Although the language of the Act states that immunity will apply if the sewer system was constructed according to applicable state standards, such standards and/or permits are set by the MDEQ. In setting such standards, the MDEQ does not seek to prevent basement backups. MDEQ permits and administrative orders and standards are issued to protect the navigable waterways such as the Great Lakes from a discharge of untreated sewage during wet weather events.

The MDEQ has governmental immunity for its rule making powers and, thus, plaintiffs seeking damages for a sewage backup would be barred from seeking such damages from both its local municipality and the MDEQ. Clearly such a policy does not promote any type of personal responsibility for the actions of government. Further, it is impossible for me to believe that in light of what has happened with the Flint water crisis that anyone would think that such a broad grant of immunity would be appropriate. In the Flint water crisis, mismanagement by the MDEQ and other government bureaucrats ultimately caused the tax payers hundreds of millions of dollars. According to the Governor's Flint Task Force, the MDEQ "caused the Flint water crisis to occur" and "suffers from cultural shortcomings that prevent it from adequately serving and protecting the public health of Michigan residents." It simply makes no sense to shield local units of government from liability based upon the recommendations of an administrative agency that is not even charged with addressing basement backups.

Thank you for your consideration in this matter and if you have additional questions or comments, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven D. Liddle", is written over the typed name.

Steven D. Liddle

SDL:md